tiff, but he denied there was any fraud on the part of the plaintiff, and insisted that a caveat ought to have been registered in the land office register by the purchasers.

In the case of the intervener Chua Choon Yam, he had not only paid the full purchase price, but had obtained on 8 June 1981, an order from the court that he be allowed to have possession of one-third of the land which he had bought which was 1,500 sq ft, together with one three-storey building on it (as per exh 'CCY1' annexed to his affidavit, affirmed on 7 May 1985). Chua Choon Yam was also allowed by the court damages for late possession to be assessed against the land owner.

It is true that a purchaser of land under an agreement has to protect his interest by filing a caveat against the land: *Haroon bin Guriaman* v *Nik Mah bte Nik Mat & Anor.*[2] But how many laymen have knowledge of 'caveat' and its application or purpose. That is the reason why the interveners had employed solicitors to do, and act for them in the purchase transactions. They have to rely on their solicitors who were acting professionally for them, to advise them and to file the caveats for them to protect their interests in the land.

It may be a different story altogether if each party had employed different solicitors to act for him. In such a case, the plaintiff can say that he has no knowledge that two-thirds of the land had been sold by the chargors before the charge was effected.

In the instant case, as admitted by the plaintiff's solicitors, the plaintiff ought to know of the sales which took place before the charge was created. The plaintiff or the common solicitors ought to have asked the purchasers of the land whether they agreed to have the land charged to the bank (plaintiff). The interveners in their affidavits said that they had never given their consent to their solicitors to have the lands charged to the bank.

In this case, if the plaintiff had not been told by the parties' common solicitors that the interveners had purchased two-thirds of the land before the whole land was charged to the plaintiff it certainly is not the fault of the purchasers.

I find there is no evidence that fraud had been practised on the chargee.

Under the circumstances, I hold that the plaintiff knew through their solicitors that the interveners were purchasers of a portion of the land. The charge of the whole land to the plaintiff could not be a valid charge since a substantial portion of it was not absolutely owned by the two defendants. There is nothing to prevent the plaintiff from proceeding against the defendants or any party who was negligent in handling the charge transactions.

Now that the first intervener had completed the purchase and had gone into possession, it would not be justified and would be plainly unconscionable to deprive him of the shophouse he had bought by holding that the charge was valid when in fact it was void, and consequently I refused to grant the plaintiff's application to have the land sold by public auction. I dismiss the plaintiff's application with costs to the interveners.

Application dismissed.

Solicitors: *JA Nathan & Co*; *E Ramasamy & Co*

Reported by *PS Ranjan*

Perwira Habib Bank Malaysia Bhd v Lim Hong Tatt

HIGH COURT (KUALA LUMPUR) – KOD NO C3-23-4296-86
SITI NORMA YAAKOB J
16 SEPTEMBER 1988

Banking – Overdraft facility – Whether limit of overdraft facility granted includes interest – Whether right to charge compound interest exists – Whether bank has power to increase rate of interest after termination of overdraft facility

The defendant has appealed against a summary judgment obtained against him, raising the following issues: (a) whether the limit of the overdraft facility provided by the plaintiffs includes interest as well, (b) whether the plaintiffs can charge compound interest and (c) whether the plaintiffs have any power to increase the rate of interest after the facility was terminated.

Held, dismissing the defendant's appeal in part with costs:

(1) The limit of the facility can only mean the maximum principal sum sanctioned by the overdraft on which interest at the rate agreed shall be levied. To assume that the limit includes interest as well would be contrary to logic and sound business practice, as the facility is a business transaction conducted by the plaintiffs in the course of their business as a banker. As such, it is not logical to expect the plaintiffs to advance money up to the sanctioned limit on an interest-free basis.

(2) The plaintiffs have every right to charge compound interest on the facility as that was a term agreed between them.

(3) Since the plaintiffs' letter of approval does not make any provision for any increase in the rate of interest, it would appear that the increase was an arbitrary act on the part of the plaintiffs and should not be allowed.

(4) The judgment to be entered against the defendant should only be for the amount as stated in prayer 1 of the statement of claim, with interest on the decretal sum at 8% pa from date of judgment to date of realization and costs.

[*Editorial Note*: The defendant has appealed to the Supreme Court vide Civil Appeal No 344 of 1988.]

G Krishnan for the defendant/appellant.
Mazlinda Makhzan (Cik) for the plaintiffs/respondents.

Cur Adv Vult

Siti Norma Yaakob J: In his appeal against an O 14 summary judgment, the defendant raised the following issues:

(1) does the limit of $750,000 overdraft facility provided by the plaintiffs include interest as well;
(2) if so, the plaintiffs are not entitled to claim more than $750,000;
(3) whether the plaintiffs can charge compound interest;
(4) whether the plaintiffs have any power to increase the rate of interest after the facility was terminated on 5 May 1986.

As a customer of the plaintiffs, the defendant was granted an overdraft facility on terms and conditions contained in the plaintiffs' letter dated 12 January 1983. The limit of the overdraft is $750,000 with interest chargeable at 14.5% pa. Another condition attached to the interest payable is that such interest shall be calculated on the daily outstanding amount and payable monthly.

The limit of the facility can only mean the maximum principal sum sanctioned by the overdraft on which interest at the rate agreed shall be levied. In this case the sanctioned limit is $750,000 at which interest at 14.5% pa will be chargeable. To assume that the $750,000 limit includes interest as well would be contrary to logic and sound business practice, as the facility is a business transaction conducted by the plaintiffs in the course of their business as a banker. As such it is not logical to expect the plaintiffs to advance money up to the sanctioned limit on an interest-free basis. The plaintiffs are therefore entitled to claim more than $750,000 and the excess of the limit represents the interest chargeable on the facility.

As for the plaintiffs charging compound interest on the facility, they have every right to do so, as that was a term agreed between them and contained in the plaintiffs' letter of approval dated 12 January 1983 under condition F.

In the same letter of approval, 31 December 1983 has been stated to be the revision date. Although no evidence was led as to what happened after that date, letters written by the plaintiffs addressed to the defendant all point to the plaintiffs continuing the facility without interruption. The defendant had also not questioned any of the monthly statements submitted to him and by this conduct, he cannot now question his liability to pay for the sum now claimed by the plaintiffs.

From the statement of the defendant's account kept by the plaintiffs, a sum of $864,166.72 is due and owing from the plaintiffs as at 30 September 1986. This represents the principal and interest at the rate of 14.5% pa. However, as from 1 October 1986, the plaintiffs have also claimed an increased rate of interest at 16.5% pa and notice of this increase is contained in their letter dated 5 May 1986 recalling the facility. Since the letter of approval does not make any provision for any increase in the rate of interest, it would appear that the increase was an arbitrary act on the part of the plaintiffs and should not be allowed. To that extent in dismissing the defendant's appeal with costs, the judgment o be entered against him should only be for the amount as stated in prayer 1 of the plaintiffs' statement of claim, with interest on the decretal sum at 8% pa from date of judgment to date of realization and costs.

Order accordingly.

Solicitors: *Krishnan & Co*; *Ng Yook Woon, Andrew TC Saw & Co.*

Reported by *Ng Sheau Jiuan*